COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Street Restoration Standards) D.T.E. 98-22

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Boston Gas Company's

Comments on the Department's

Proposed Standards

I. Background

On February 13, 1998, the Department issued a "Notice of Compliance Review" to investigate the standards employed by public utility operators to restore municipal street surfaces after performing excavations. The Department issued its proposed standards on April 16, 1999.

The purpose of this proceeding was for the parties with competing interests -- broadly represented by the utility industry on the one hand and the municipalities on the other -- to reach consensus and develop a set of uniform standards to be followed by utilities when excavating in and restoring roadways. The Department conducted technical sessions on July 23 and August 12, 1998, in which the parties came together and, with the Department's help, identified the relevant issues. These sessions were followed by meetings of a subcommittee represented by: Boston Gas Company, the New England Gas Association, Boston Edison Company, the Massachusetts Highway Association, the Town of Swansea, and the City of Somerville. After much discussion and hard work, the subcommittee successfully reached consensus on a set of standards and, on November 20, 1998, the subcommittee presented them to the Department. The subcommittee document represents the result of extensive sessions during which both sides negotiated and ultimately reached workable standards intended to ensure that road surfaces are put in as good repair as they were in when opened and also to accommodate the legitimate concerns and needs of the parties.

While the Department's standards capture many of the important elements of the subcommittee's standards, they do contain some noteworthy departures. Boston Gas comments on the departures below.

II. Performance vs. Prescriptive Standards

At the Department's May 11, 1999 hearing, Commissioner Connelly, noting the prescriptive nature of the Department's proposed standards, solicited input on whether the standards should be more performance oriented. Though Boston Gas would prefer a performance-based approach, the Company, as noted above, was a member of the sub-committee that reached consensus with the municipalities and highway

interests in developing prescriptive standards. The standards recognize the needs and concerns of competing interests and Boston Gas is committed to abide by them.

III. Definitions

The subcommittee agreed that the 1988 edition of the Massachusetts Highway Standards would be referenced. Adopting a specific edition lends certainty to the standards. Such certainty will not exist if future revisions by MassHighway are automatically incorporated in the Department's standards. Accordingly, the definition should be revised to: "Mass. Highway Standards means the 1988 edition of the Massachusetts Highway Department Standard Specifications for Highways and Bridges."

"Street Opening Work" is defined to mean "any cutting, excavating … in accordance with these standards, municipal ordinance, and any other applicable law …." Boston Gas believes that the reference to municipal ordinance suggests that each municipality may impose conditions on utility excavations that are inconsistent with the Department's standards. For the reasons discussed in Section IV, below, the Company requests that the reference to municipal ordinance be deleted from this definition.

IV. Minimum Standards vs. Maximum Standards

Section three of the Department's proposed standards would impose minimum permit requirements. Specifically, the standard states: "The following are minimum requirements that a Municipality may require of a Utility when granting permits." During the Department's hearing on its proposal, conducted on May 11, 1999, Lester Goodman, speaking on behalf of Boston Gas, voiced the Company's great concern with this provision. Mr. Goodman commented:

This provision does not reflect the agreement hammered out by the subcommittee. It would set a floor with no upper boundaries. A municipality would have the unchecked authority to impose onerous permit conditions on utilities, conditions that were not contemplated nor agreed to by the utilities in the compromise reached by the subcommittee. The Department's proposal for minimum standards could lead to a utility having to comply with many different standards and face inordinately high costs, as each municipality is free to condition permits differently. This result is clearly contrary to the objective of seeking one uniform set of standards that was envisioned at the start of this process.

Tr. 4, pp. 21-24. Mr. Goodman's sentiments were echoed by other members of the subcommittee, including those representing municipalities.

While these individuals speak from personal experience, the Supreme Judicial Court has weighed in on this issue from a broad policy perspective. The court held that there is a "fundamental State policy of ensuring uniform and efficient utility service to the public." Boston Gas Company v. City of Somerville, 420 Mass. 702, 706 (1995); New England Tel & Tel. Co. v. Lowell, 369 Mass. 831, 834 (1976) (discussing the desirability of uniform utility regulation). In Boston Gas Company v. City of Newton, 425 Mass. 697 (1997), utility street opening permit fees were at issue. The court, in addressing the effect that a multitude of fee structures would have, stated: "Clearly, the differences between the municipalities in assessing costs impedes the uniformity of gas distribution; moreover, where the system becomes less uniform, such balkanization is likely to lead to less efficient service." Id., n.3.

Disparities in trenching, backfilling, compaction, and resurfacing requirements would be at least as great an impediment to maintaining uniformity of gas distribution as the impediment that results from a variety of fee structures. Calling uniform standards "minimum standards" for roadway reconstruction invites municipalities to impose additional permit conditions, resulting in non-uniform and inefficient utility service. This would be contrary to fundamental state policy and with the agreement reached by the subcommittee.

V. Controlled Density Fill

Using controlled density fill ("CDF") as backfill is addressed in Section eight of the proposed standards. On prior occasions, Boston Gas has informed the Department of its concerns with the use of CDF in and around natural gas pipe. Briefly:

The fly ash component of CDF is corrosive to metallic pipe;
CDF affects the migration pattern of natural gas, thus making leaks difficult to locate and repair;
CDF encases plastic pipe in an immovable cast, thereby preventing the normal seasonal expansion and contraction of the material, which could lead to pipe breakage; and
CDF is more costly than conventional backfill material and method.
The Company agrees with the Department's proposed standards that using CDF must be at the option of the utility in appropriate circumstances.

VI. Pavement Restoration

Section 9.5 allows the utility to choose between the grind and inlay method or the infrared method to correct pavement settlement. However, for patches up to five feet by seven feet, the standard mandates the use of the infrared method. Boston Gas does not understand the significance of this dimension. It has been the Company's experience that the use of the infrared method for repairing pavement can result in reflective cracking within one year of its application of any size. Boston Gas believes that the utility should be allowed to employ other techniques that achieve better results. As now written, the use of the grind and inlay method, as well as other suitable techniques that may be developed, is prohibited for patches up to five feet by seven feet. The Company believes that the Department should not exclude appropriate methods to accomplish the task.

The Company proposes that the Department amend Section 9.5 to read (bold insertion, underline deletion):

Same day patches installed in conformance with these standard will not require re-excavation and may utilize the infrared method, the grind and inlay method, or other suitable methods to correct subsequent settlements. However, the restoration of single patches up to five feet by seven feet in area shall be by the infrared method, unless another method is agreed to by the Municipality.

This is consistent with the listing-but-not-limiting approach used by the Department in Section 7.1, Excavations ("… using a jack hammer, saw, or other accepted method….").

VII. Permanent Patch Restoration

Section 9.14 of the Department's proposed standards prohibits using bituminous concrete for pavement restoration between November 15th and April 15th. Bituminous concrete, the material used for permanent restorations, was at one time not readily available during the winter months. This circumstance has changed and now bituminous concrete is generally available year round in Massachusetts. The Company believes that its use should not be prohibited when it is available. Moreover, its use eliminates the necessity and expense of placing a temporary patch, only to return later and install a permanent patch. Accordingly, Section 9.14 should be deleted.

VIII. Pavement Repair

Section 9.8, in part, would require that "All pavement courses shall be thoroughly compacted to 95 percent modified Proctor density or greater prior to placement of subsequent courses." Boston Gas notes that Proctor density is a measure of soil density and is inapplicable in the context of pavement. The Company recommends deleting this reference and rewriting Section 9.8 to read: "All pavement courses shall be thoroughly compacted prior to placement of subsequent courses." Requiring "thorough compaction," together with the other specifications of Section 9.8 (e.g., specifying pavement materials and depths of layers) will achieve sound pavement

repair.

IX. Temporary Patch Reinspections

The Department's proposed standard 9.16 makes the utility responsible for maintaining temporary patches in a safe condition. Boston Gas believes that with this obligation it should also have the ability to determine when inspections are appropriate. This is particularly important following "severe meteorological events" when the Company may have to attend to other safety priorities.

The Company recommends that the second sentence of Section 9.16 ("Temporary patches shall be inspected monthly and after severe meteorological events until the permanent patch is completed.") be deleted.

X. Request for Clarification

The Company asks that the Department clarify Section 9.4 and its relation to Section 9.11 regarding the use of permanent patches and temporary patches. Section 9.4 requires that "same day permanent patches shall be utilized unless exempted in the Permit." Section 9.11 allows temporary patches in four situations, some of which conflict with Section 9.4. For example, temporary pavement repairs are permitted: for emergency repair work completed outside normal business hours; for work performed when bituminous concrete is not available; in situations where it is not feasible to place a temporary patch; and for excavations that will be reopened within five working days. Boston Gas suggests revising Section 9.4 as follows: "Same day permanent patches shall be utilized unless exempted in the Permit, or otherwise exempted by these standards."

XI. Conclusion

Boston Gas Company appreciates the opportunity to participate in resolving the important issue of properly restoring roadway surfaces following utility repair and maintenance work to its subsurface facilities.

Respectfully submitted

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